



ECTOR COUNTY, TEXAS  
TRACEY BRIGHT  
ECTOR COUNTY ATTORNEY  
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Opinion Committee

**QQ-880**

Honorable Dan Morales  
Attorney General  
State of Texas  
Price Daniels Sr. Bldg.  
7th Floor  
209 W. 14th Street  
Austin, Tx 78711

**ISSUE:** Under the Texas Tax Code, can a local taxing authority accept an amount which is less than the total figure of delinquent taxes certified on the tax roll and which is less than the appraised value of the property without actually foreclosing on such property and thereby avoid appearing on the chain of title if the particular property involved retains serious environmental problems?

Dear General Morales:

I am writing this request on behalf of Ector County Independent School District, the Odessa Junior College District, the City of Odessa, Ector County Hospital District, and Ector County. These entities are presently facing a reoccurring situation regarding the collection of delinquent ad valorem property taxes. I am sure that you are aware that Ector County was once the center of oil and gas industries in Texas; consequently, during the late 1970s and early 1980s, numerous oil field industries operated within my clients' county lines. Once the bust occurred during the mid 1980s, most of these companies either closed their doors or went bankrupt. During the highly prosperous years, environmental concerns were apparently non-existent. As a result, serious environmental hazards left behind by the oil and gas industries can be found on numerous tracts of land in Ector County.

These taxing authorities' problem arises due to the delinquent ad valorem property taxes which have accrued on tracts such as these. During the boom, the tracts were appraised at extremely high values which therefore led to extremely high taxes. These taxes were frequently not paid, and as a result, penalties and interest attached to the high tax base. Today, the appraised value has been lowered on many of these tracts; however, the delinquent

taxes of the late 1970s and 1980s have attached, and the amount of delinquent taxes appearing on the tax roll on these problem tracts is astronomical.

As the economy in Ector County begins to improve, the taxing authorities have been approached by numerous individuals and companies to give them "a break" on the delinquent taxes which have accrued on these tracts, and in return for the tax break, the potential purchasers will under take the costs of cleaning up the environmental problems. Clearly, the rationale behind these companies' offers is that they are not going to pay \$100,000; \$200,000; or \$300,000 in delinquent taxes and then turn right around and pay that same amount or more in cleanup costs.

Generally, if a taxpayer wants to pay less than the amount of delinquent taxes on the tax roll or less than the amount of the appraised value of the land, a lawsuit is filed, a judgment is granted, and the sheriff's sale is conducted. If the property does not sell at the sheriff's sale, it is automatically struck off the various taxing authorities, who then can accept less than the amount of the delinquent taxes under Section 34.05 of the Texas Tax Code. Tex Tax Code Ann. §34.05 (Vernon 1992). Tracts of land retaining environmental contamination pose serious problems to the general procedure outlined above because such judicial foreclosure places a taxing authority in the chain of title, thereby exposing it to risk of liability as a potential responsible party.

In the Texas Tax Code, there are four sections which deal with environmental issues and local property taxes. See: Tex. Tax Code. Ann. § 23.14 (Vernon Supp. 1996), (if property is subject to an environmental response, chief appraiser can reduce appraised value); Tex. Tax Code Ann. § 26.045 (Vernon Supp. 1996) (grants roll back tax rate relief for pollution control requirements and pollution control property); Tex. Tax Code. Ann. § 11.29 (Vernon 1992) (exemption granted for land dedicated as disposal site for depositing or discharging materials dredged from main channel of Gulf Intracoastal Water Way); Tex. Tax Code Ann. § 11.31 (Vernon Supp. 1996) (exemption granted if all or part of property is used wholly or partly as a facility, devise, or method for control of air, water, or land pollution). None of these sections address purging delinquent taxes on land infested with environmental hazards, accepting less than the amount of taxes on the tax roll, or granting local taxing authorities relief from liability as to cleanup costs.

Under Texas state environmental regulations, the potential liability for the cost of environmental cleanup as to a taxing authority upon foreclosure is high. Under Section 361.197 of the Texas Health and Safety Code, the commission must file a cost recovery action against all responsible parties. Tex. Health & Safety Code Ann. § 361.197 (Vernon 1992). A court apportions the costs of cleanup among the liable parties as it determines is

equitable and just, looking at a variety of factors. Tex. Health & Safety Code Ann. § 361.341, § 361.343 (Vernon 1992). The Texas Legislature defines those persons who could be held responsible as individual, corporation, organizations, governments, business trust, partnerships, associations, or other legal entities. Tex. Health & Safety Code Ann. § 341.001 (Vernon 1992). The only defense a party may bring are listed in Section 361.275 of the Texas Health and Safety Code. Tex. Health & Safety Code Ann. § 361.275 (Vernon 1992). As to governmental entities, a specific exemption from liability of cleanup cost exist if the property was acquired by an involuntary transfer or acquisition or by the power of eminent domain. *Id.* As to a local taxing authority, it falls under the Texas Legislature's definition of a person and would therefore be named in any cost recovery action by the commission if it, that is, the taxing authority, appears on a chain of title of a piece of property. It is questionable whether the defense allowed in Section 361.275(e)(c) of the Texas Health and Safety Code would be available because a court may not consider a tax foreclosure an "involuntary transfer."

Federal law is slightly more favorable toward a taxing authority's position in these cases. For example, under the Comprehensive Environmental Response Compensation and Liability Act (hereinafter "CERCLA"), "the owner and operator of a vessel or facility" is considered a potential responsible party who will be held jointly and severally liable for cleanup costs. 42 U.S.C. § 9607(A)(1); See Tanglewood East Homeowners v. Charles-Thomas, Inc., 849 F.2d 1568 (5th Cir. 1988). CERCLA defines who is considered an owner or operator. An owner or operator is:

(iii) in the case of any facility, title, or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.

42 U.S.C. § 9601(20)(A) (*emphasis added*).

More specifically, § 9601(20) defines *who is not* considered an owner or operator:

The term "owner or operator" does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign.

42 U.S.C. § 9601(20)(D) (*emphasis added*).

Under either definition, a taxing authority would be exempt

from responsibility for recovery costs incurred under CERCLA. Unfortunately, CERCLA appears to be the only federal environmental law which specifically addresses tax foreclosures.

As to state environmental regulations, a taxing authority will more than likely be held responsible for recovery expenses, albeit only its proportionate share. Under federal environmental regulations, taxing authority has a better chance of avoiding liability but cannot be guaranteed a safe haven in every federal statute as one finds in CERCLA § 9601. The Texas Tax Code does not address the above issue, and no Texas case law addresses the issues of delinquent ad valorem property taxes are environmental liability, much less being directly on point.

In conclusion, on behalf of these taxing authorities, I found no state law or case law specifically addressing the issue of tax foreclosures and liability for environmental cleanup costs. Public policy requires that such be resolved, as purging delinquent taxes on environmental problem tracts will benefit all parties involved. Specifically, as to the local taxing authorities, such purging will place the property back on the tax roll as revenue producing account. As to the state of Texas, environmental cleanup actions will be undertaken through private measures, thereby avoiding expense to the state. Finally, the taxpayer benefits in that he has a safer environment to live in and the tax rate is kept as low as possible. If nothing but for public policy reasons, we believe a local taxing authority should have the ability to purge delinquent taxes without foreclosing on the piece of property if an environmentally hazardous tract of land is involved; however, we are seeking specific statutory authority to do so and request that you address this issue. I would appreciate receiving a copy of your opinion once it is issued.

Respectfully submitted,



Tracey Bright,  
Ector County Attorney

TB:bd